

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

TERRY MONTGOMERY,

Petitioner,

No. CIV S-04-2116 FCD DAD P

vs.

A,A, LARMARQUE,

Respondent.

ORDER

Petitioner, a state prisoner proceeding pro se, has filed an amended petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The amended petition was filed December 6, 2004. Petitioner has paid the filing fee.

Since petitioner may be entitled to the requested relief if the claimed violation of constitutional rights is proved, respondent will be directed to file a response to petitioner's amended petition.

On December 6, 2004, petitioner also filed a handwritten document in which he stated "I'm also asking for a motion for a stay." In light of the context in which this statement was made, the court has construed it as petitioner's request for additional time in which to file his amended petition. In light of this order and the filing of petitioner's amended petition, the request for an extension of time will be denied as moot.

1 On December 6, 2004, petitioner also requested the appointment of counsel.  
2 There currently exists no absolute right to appointment of counsel in habeas proceedings. See  
3 Nevius v. Sumner, 105 F.3d 453, 460 (9th Cir. 1996). However, 18 U.S.C. § 3006A authorizes  
4 the appointment of counsel at any stage of the case “if the interests of justice so require.” See  
5 Rule 8(c), Fed. R. Governing § 2254 Cases. In the present case, the court does not find that the  
6 interests of justice would be served by the appointment of counsel at the present time.

7 In accordance with the above, IT IS HEREBY ORDERED that:

8 1. Respondent is directed to file a response to petitioner’s amended petition  
9 within thirty days from the date of this order. See Rule 4, Fed. R. Governing § 2254 Cases. An  
10 answer shall be accompanied by any and all transcripts or other documents relevant to the  
11 determination of the issues presented in the application. See Rule 5, Fed. R. Governing § 2254  
12 Cases;

13 2. Petitioner’s traverse, if any, shall be filed and served within thirty days of  
14 service of an answer;

15 3. If the response to petitioner’s amended petition is a motion, petitioner’s  
16 opposition or statement of non-opposition shall be filed and served within thirty days of service  
17 of the motion, and respondent’s reply, if any, shall be filed within fifteen days thereafter;

18 4. Petitioner’s December 6, 2004 motions for an extension of time and for  
19 appointment of counsel are denied; and

20 5. The Clerk of the Court shall serve a copy of this order together with a copy of  
21 petitioner’s amended petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 on Jo  
22 Graves, Senior Assistant Attorney General.

23 DATED: April 18, 2005.

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25 DAD:4  
26 mon2116.100

  
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DALE A. DROZD  
UNITED STATES MAGISTRATE JUDGE